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Heather Figueroa  
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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
MOTION *IN LIMINE* TO EXCLUDE  
EVIDENCE OFFERED IN VIOLATION  
OF ARIZONA RULE OF EVIDENCE 403  
AND 404(b)

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion *in Limine* to Exclude Evidence in Violation of *Ariz. R. Evid.*, Rule 403 and 404(b). The State's position is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The defense team's allegation that the State is pursuing this prosecution only to "dirty up" Steven DeMocker is simply not true. The State's interest in this case, as it is in all cases, is to see that justice is done.

The State will not seek to introduce evidence regarding the following issues in its case-in-chief:

- 1) Multiple extramarital affairs with the exception of relationships Defendant had or has with Barbara O'non and Renee Girard;
- 2) Use of human growth hormone by Defendant;
- 3) Unreported incident from 2006 involving Defendant and Carol Tidmarsh; and
- 4) References to Defendant's business practices except those that relate to his professional and personal relationship with Barbara O'non.

In the event that Defendant seeks to introduce evidence of "good character" during the mitigation/aggravation or penalty phase of the trial, the State may introduce evidence regarding these issues for rebuttal. *See State v. Shepherd*, 27 Ariz.App. 448, 450, 555 P.2d 1136, 1138 (1976) (The State may offer any competent evidence to rebut any material evidence introduced by a defendant.)

At hearings during the week of January 12, 2010, the State informed the Court that it will seek to introduce evidence of the relationships between Defendant and Barbara O'non and Defendant and Renee Girard in its case-in-chief. This evidence will demonstrate that, from early 2008 up to the time of Carol's death on July 2, 2008, Defendant was under increasing pressure and stress from several different sources with financial pressures lead among them.

First, it was during this time frame that Defendant and Barbara O'non were in the process of ending both their professional and personal relationships. Ms. O'non had worked with Defendant since 1999 and had been in an on-again, off-again romantic relationship with Defendant for several years as well. Second, as has been demonstrated to this Court, Defendant's compensation had diminished while his already significant debt was increasing. The dissolution of the professional relationship with Ms. O'non would cause further reduction in Defendant's compensation due to Ms. O'non's insistence that the "split" of their

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1 accounts be more in her favor. Third, his divorce from Carol had become a full blown battle  
2 over money, specifically how the community debts would be paid. The primary liquid asset  
3 in the community property was Defendant's sizable 401K. After the divorce, neither  
4 Defendant nor Carol had anything of value to show for their 20+ years of marriage or  
5 Defendant's success as a financial advisor and both still had significant debt. Ms. O'non will  
6 testify that on several occasions during the divorce proceedings, Defendant told her that he  
7 and his daughters would be better off if Carol were dead. Ms. O'non will also testify that  
8 shortly after Carol's murder, Defendant called her and told her Carol's death was the result of  
9 an accident even though he knew the incident was under investigation as a homicide.

11 Ms. O'non will offer testimony that on at least two occasions she became physically  
12 afraid of Defendant due to his sudden outbursts of anger when she either questioned his  
13 business dealings with their clients or other business related matters. These are issues which  
14 affected his compensation and overall financial condition. Ms. O'non will testify that these  
15 events did not take place in public; that both incidents occurred while they were alone and  
16 that on one occasion Defendant was standing nose to nose "dead-square in front of me" and  
17 was so aggressive she felt physically threatened. This Court heard statements of Defendant's  
18 peaceful nature, that he would not even kill insects or spiders. The fact that when out of the  
19 public's eye, Defendant could and did become enraged when challenged regarding his  
20 financial condition is inherently relevant to both the theory of the State's case-in-chief and  
21 the (F)(5) and (F)(6) aggravators.  
22

24 Ms. O'non will testify that Defendant always carried a work-out bag in his vehicle,  
25 including several pairs of athletic type shoes, was prepared for all types of weather  
26 conditions and "could change his clothes out of the trunk of his car." Ms. O'non will also

1 testify that it was most uncommon for Defendant to be out of contact for any period of time,  
2 that he always carried his cell phone and extra batteries with him.

3 Because Defendant had active relationships with both women at the time of Carol's  
4 murder, the observations of Ms. O'non and Ms. Girard will assist the jury in determining  
5 Defendant's state of mind pertinent to his financial condition at the time of Carol's murder.  
6 Ms. O'non has particular insight due to her long-term professional and personal relationships  
7 with Defendant. In regard to Ms. Girard, it will tend to demonstrate her bias in favor of  
8 Defendant.  
9 Defendant.

10 As previously stated, the relationships between Ms. O'non and Defendant and Ms.  
11 Girard and Defendant will not be introduced with the intent of proving Defendant's multiple  
12 extra-marital affairs are in any way linked to the motive for Carol's murder; however, the  
13 nature of these relationships is relevant and should not be excluded.  
14

15 "[R]elevant evidence" means evidence having a "tendency" to  
16 make the existence of a fact of consequence more or less  
17 probable. Rule 401 *Ariz. R. Evid.* Evidence is relevant if it has  
18 any basis in reason to prove a material fact in issue or if it tends  
19 to cast light on the crime charged. *State v. Moss*, 119 Ariz. 4,  
20 579 P.2d 42 (1978).

21 *State v. Adamson*, 136 Ariz. 250, 261, 665 P.2d 972, 983 (1983).

22 "Relevant evidence may be excluded, however, 'if its probative value is substantially  
23 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading to the  
24 jury, or by considerations of undue delay, waste of time, or needless presentation of  
25 cumulative evidence.' *Ariz. R. Evid.* 403." *State v. Connor*, 215 Ariz. 553, 562, 161 P.3d  
26 596, 605 (App. 2007). Here, there is no danger of unfair prejudice. The fact that Defendant  
and Ms. O'non entered into a romantic relationship while each was married to someone else  
is simply part of this case and will not be introduced in a manner which might inflame the

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1 jury. The fact is this type of thing happens to all sorts of people. Moreover, Defendant and  
2 Carol had been pursuing a divorce and had been living apart for several years. The fact that  
3 an individual may become involved in a romantic relationship while married or separated and  
4 before a divorce is final does not impose a "mark of shame" as it did in decades past.

5  
6 **CONCLUSION:**

7 The evidence of the relationships Defendant had with both Ms. O'non and Ms. Girard  
8 is relevant, is not unfairly prejudicial and should not be excluded. Defendant's Motion should  
9 be denied.

10 RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of March, 2010.

11  
12 Sheila Sullivan Polk

13 YAVAPAI COUNTY ATTORNEY

14  
15 By: 

16 Joseph C. Butner

17 Deputy County Attorney

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COPIES of the foregoing delivered this  
5th day of March, 2010 to:

Honorable Thomas J. Lindberg  
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